

State of California
BOARD OF EQUALIZATION
SALES AND USE TAX REGULATIONS

Regulation 1618. UNITED STATES GOVERNMENT SUPPLY CONTRACTS.

Reference: Sections 6007 and 6381, Revenue and Taxation Code.
Areospace Corp. v. St. Bd. of Equalization (1990) 218 Cal.App.3d1300.

(a) DEFINITIONS.

(1) "United States Government supply contract" means a contract with the United States to furnish, or to fabricate and furnish, tangible personal property including ships, aircraft, ordnance, or equipment, whereby title to tangible personal property purchased for use in fulfilling the contract passes to the United States pursuant to the title provisions contained in the contract before the contractor uses the property to perform the function or act for which the property was designed or manufactured. The term "U.S. Government supply contract" does not include contracts to construct improvements on or to real property or to the purchase of tangible personal property for use in fulfilling such contracts.

(2) "Direct consumable supplies" means supplies, tools, or equipment consumed in the performance of a contract which are specifically identified to the contract and the actual cost of which is charged as a direct item of cost to the specific contract. "Tools" as used in this definition does not include "special tooling" subject to the provisions of Federal Acquisition Regulation (FAR) 52.245-17 or any regulation(s) which succeeds FAR 52.245-17.

(3) "Overhead materials" means supplies consumed in the performance of a contract the cost of which is charged to an overhead expense account and then allocated to various contracts based on generally accepted accounting principles.

(b) APPLICATION OF TAX.

Sales to U.S. Government supply contractors of tools, equipment, direct consumable supplies and overhead materials are sales for resale if the United States takes title pursuant to a United States government supply contract prior to any use of the property by the contractor to perform the function or act for which the property was designed or manufactured. Accordingly, tax does not apply to such sales even though the property does not become a component part of the tangible personal property furnished, fabricated, or manufactured by the contractor. If the contractor makes any use of the property to perform the function or act for which the property was designed or manufactured prior to the passage of title to the United States, tax applies to the sales to or to the use by the contractor.

Whether title to direct consumable supplies and overhead materials passes to the United States under a United States government supply contract and the time at which title passes will be determined in accordance with the title provisions contained in the contract, if any. In a case where the cost of direct consumable supplies or overhead materials are charged to an expense account which is then allocated to various locations, cost centers or contracts, some of which are engaged in other than United States government cost reimbursement contracts and/or fixed-price contracts with a progress payments clause, it will be considered that title did not pass to the United States prior to use of the property, and tax will apply with respect to the purchase or use of the property charged to the expense account, unless the item is specifically accounted for as being charged to a specific United States government supply contract, pursuant to the terms of which title passes to the United States prior to the use of the item. Property will be considered charged to a specific United States government supply contract when it is allocated pursuant to:

(1) accounting standards promulgated by the Cost Accounting Standards Board (Office of Federal Procurement Policy, Office of Management and Budget), if applicable; otherwise,

(2) generally accepted accounting principles that are equitable, consistently-applied, and appropriate to the particular circumstances.

Regulation 1618. (Continued)

Direct consumable supplies and overhead materials which may be allocated in this manner include, but are not limited to, property used to repair items of capital equipment when a portion of the contractor's use is properly allocable to its government supply contracts, notwithstanding the fact that title to the property being repaired remains with the contractor.

Special Tooling. Effective December 29, 1989, title will generally not pass prior to use by the contractor for special tooling which is subject to the Special Tooling Clauses of Federal Acquisition Regulation (48 CFR) 52.245-17. Title to such special tooling will pass prior to use by the contractor only if the agreement between the contractor and the United States government contains a custom clause providing for title passage prior to use by the contractor. Therefore, sales of special tooling will generally be subject to tax.

History: Effective, as amended, May 22, 1943.

Adopted as of January 1, 1945, as a restatement of previous rulings.

Amended and renumbered November 3, 1971, effective December 3, 1971.

Amended April 25, 1984, effective July 21, 1984. The title to the regulation was changed and the text entirely rewritten.

Amended August 1, 1995, effective November 10, 1995. Added "pursuant to the title provisions contained in the contract" to subdivision (a)(1); added language to subdivision (a)(2) to provide that the term "tools" as used therein did not include "special tooling" as defined. Amended subdivision (b) as follows: deleted subdivisions (1) and (2); added "overhead materials," "pursuant to a United States government supply contract," "to" and "the" to the first paragraph; deleted language from the second paragraph providing for a different tax treatment depending on whether the overhead materials account is allocated to cost centers or separate locations that are either exclusively or partially involved in United States government supply contracts; added language to the second paragraph providing that accelerated passage of title depends on the clauses contained in the contract and also stating when a charge will be considered allocated to a specific United States government supply contract; added third and fourth paragraphs.

Regulations are issued by the State Board of Equalization to implement, interpret or make specific provisions of the California Sales and Use Tax Law and to aid in the administration and enforcement of that law. If you are in doubt about how the Sales and Use Tax Law applies to your specific activity or transaction, you should write the nearest State Board of Equalization office. Requests for advice regarding a specific activity or transaction should be in writing and should fully describe the facts and circumstances of the activity or transaction.